

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200817028**

Release Date: 4/25/2008

Index Number: 860D.01-00, 9100.00-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:FIP:B2

PLR-148889-07

Date:

January 08, 2008

Legend:

Trustee =

Trust 1 =

Trust 2 =

Trust 3 =

Former Trustee =

Underwriter =

State =

Date 1 =

| | |
|---------|---|
| Date 2 | = |
| Date 3 | = |
| Month 1 | = |
| Month 2 | = |
| Year 1 | = |
| Year 2 | = |
| Year 3 | = |
| Year 4 | = |

Dear :

This responds to a letter dated October 15, 2007 requesting an extension of time under section 301.9100-3 of the Procedure and Administration Regulations to make an election under section 860D of the Internal Revenue Code to treat Trusts 1, 2, and 3 (collectively, the "Trusts") as Real Estate Mortgage Investment Conduits ("REMIC"s).

Facts:

Trust 1 and Trust 2 were formed on Date 1 and Trust 3 was formed on Date 2. The Trusts were formed as State statutory trusts pursuant to trust agreements between Underwriter and Former Trustee. Trustee represents that the Trusts each meet the requirements to qualify as a REMIC under sections 860A through 860G and were eligible to be treated as a REMIC starting in taxable Year 1.

The Trusts are part of a series of the Underwriter's REMIC securitization program. Each trust agreement provides that the Former Trustee would file the appropriate forms to treat Trusts as REMICS beginning in Year 1. The trust agreements further provide that the Former Trustee would serve as Trusts' direct representative and were thus responsible for preparing, signing, and filing the tax and information returns for each REMIC. Under the trust agreements, REMIC elections were supposed to be made on Forms 1066 filed for each Trust beginning with taxable Year 1.

Former Trustee and Underwriter discussed assigning the responsibility to make the REMIC elections to an outside vendor, and Former Trustee believed Underwriter had obtained an accounting firm to file Form 1066 and make REMIC elections. An engagement letter was drafted assigning Former Trustee's filing and reporting

obligations to an accounting firm, but the engagement letter was never signed. This resulted in a misunderstanding regarding Former Trustee's filing duties; therefore, Former Trustee failed to file Forms 1066 or make REMIC elections for taxable Year 1. An employee of Former Trustee ("Employee") subsequently concealed the failure to file Forms 1066 or make REMIC elections throughout Year 2. Consequently, Forms 1066 were also not filed for taxable Year 2.

In Month 1 of Year 3, Former Trustee merged with Trustee, at which point Trustee became responsible for the administration of the Trusts. Trustee represents that due diligence was performed to determine that Former Trustee was in compliance with all of its fiduciary duties. Due to Employee's continued concealment, however, Trustee did not discover the failure to file Forms 1066 for Years 1 and 2 and thus the failure to make REMIC elections. The concealment, along with Trustee's responsibility for filing thousands of other tax forms each year, resulted in a failure to file Forms 1066 for taxable Year 3.

Trustee discovered that Forms 1066 had not been filed for taxable Years 1, 2, and 3 upon Employee's departure in Month 2 of Year 4, and as a result, that the Trusts had not elected REMIC status.

Trustee filed Forms 1066 for each of the Trusts' taxable Years 1, 2, and 3, making REMIC elections for each of the Trusts on Date 3. Trustee then requested section 301.9100-3 relief seeking reasonable extension of time to make REMIC election under section 860D(b)(1).

Taxpayer makes the following representations. Trustee filed Forms 1066 for taxable Years 1, 2, and 3, made REMIC elections, and sought reasonable extension of time to file before the Internal Revenue Service discovered the failures to file and make REMIC elections. The Trustee did not alter a return position of which a section 6662 penalty has been or could be applied and did not adopt a new position that requires or permits the election to which the request for 9100 relief relates. The Trustee did not choose to not make a REMIC election after having been informed of the tax consequences of making such an election. Finally, taxpayer represents that since no facts have changed since the original due date for making the REMIC election, the election will not be advantageous to the Trusts; therefore, the Trusts will not have a lower tax liability in the aggregate for all the years affected by the REMIC election than if the REMIC election had been timely made.

Law and Analysis:

Section 860D(b)(1) of the Code provides that an entity which meets the requirements of a REMIC under section 860D(a) may elect to be treated as a REMIC on the return for its first taxable year. Once elected, section 860D(b)(1) provides that the entity will be treated as a REMIC for the first taxable year in which the election is made and all

subsequent taxable years until such status is terminated under section 860D(b)(2). Section 1.860D-1(d)(1) of the Income Tax Regulations provides that a qualified entity makes a REMIC election by timely filing, for its first taxable year, a Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return, signed by a person authorized to sign that return. This regulation also provides a reference to section 301.9100-1 for rules regarding extensions of time for making elections.

Section 1.860F-4(b)(1) provides that the due date and any extensions for filing a REMIC's annual tax return are determined as if the REMIC were a partnership. Therefore, pursuant to section 1.6031-1(e)(2), a REMIC's annual return must be filed on or before the fifteenth day of the fourth month following the close of the taxable year, unless an extension is granted.

Section 301.9100-3 sets forth parameters for determining whether, under particular facts and circumstances, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements for an automatic extension under section 301.9100-2. Section 301.9100-3(a) provides that when a taxpayer does not meet the requirements for an automatic extension under section 301.9100-2, the taxpayer must provide evidence satisfactorily establishing that the taxpayer acted reasonably and in good faith and that granting relief will not prejudice the Government.

Section 301.9100-3(b)(1) provides that, subject to section 301.9100-3(b)(3), a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer satisfies at least one of the following five criteria: (i) the request for relief was made before the Service discovered the failure to make the regulatory election; (ii) the failure to make the election was due to intervening events beyond the taxpayer's control; (iii) after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) the taxpayer reasonably relied on the written advice of the Service; or (v) the taxpayer reasonably relied upon a qualified tax professional, including a tax professional employed by the taxpayer, and that tax professional failed to make or failed to advise the taxpayer to make the election.

Section 301.9100-3(b)(2) provides that a taxpayer has not reasonably relied on a qualified tax professional if the taxpayer knew, or should have known, that the professional was either (i) not competent to render advice on the regulatory election or (ii) not aware of all relevant facts.

Section 301.9100-3(b)(3) provides that a taxpayer will not be deemed to have acted reasonably and in good faith if taxpayer does one of the following: (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested; (ii) was informed of the required election and the subsequent tax consequences but chose not to make the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c) provides that the interests of the Government are prejudiced if granting relief would result in the taxpayer having a lower liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

In the instant case, Taxpayer represents that the request for relief was made prior to the Service discovering the failure to make the regulatory election, thereby satisfying the reasonable and in good faith requirement of section 301.9100-3(b)(1)(i). Taxpayer also asserts that none of the exceptions under section 301.9100-3(b)(3) apply, and thus Taxpayer is not precluded from being deemed to have acted reasonably and in good faith. Additionally, Taxpayer represents that the Government will not be prejudiced under section 301.9100-3(c), since granting relief will not result in lower tax liability in the aggregate for all applicable years.

Conclusion:

Based on the information submitted and representations made, we conclude that Trusts have satisfied the requirements for granting a reasonable extension of time to allow them to make elections under section 860D to be treated as REMICs for Year 1 and subsequent taxable years. Therefore, the Forms 1066 filed on Date 3 on behalf of the Trusts, electing REMIC status for Year 1, will be deemed to have been timely filed.

This ruling is limited to the timeliness of the REMIC election of the Trusts. This ruling does not relieve the Trusts from any penalty that they may owe as a result of the failure to timely file Form 1066. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination. No opinion is expressed with regard to whether the Trusts qualify as REMICs under subchapter M, part 1, of the Code.

No opinion is expressed with regard to whether the Trusts' tax liability is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

A copy of this letter is being forwarded to the service center where Trusts file their return with instructions that although their Forms 1066 were not timely filed, the Trusts are treated as having made timely elections under section 860D(b).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Thomas M. Preston
Thomas M. Preston
Senior Counsel, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)